UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

Docket No.: S1 16 CR 351-02 (LTS)

-against-

Sentence Date: March 2, 2017

DAVID HOBSON,

Defendant.

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DEFENDANT'S SENTENCING MEMORANDUM

Respectfully submitted,

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INTRODUCTION

Defendant, David Hobson ("David") respectfully submits this memorandum to assist the Court in advance of his sentencing scheduled for March 2, 2017. David Hobson stands before the Court as a first-time, non-violent offender, after conviction by guilty plea to one count of conspiracy to commit securities fraud in violation of 18 USC §371 and one count of securities fraud in violation of 15 USC. §§ 78j(b) and 78ff and 17 CFR §240.10b-5, and 18 USC §2. David was a financial advisor at the time of the offenses. His 22-year employment history within the financial services industry was solid and unblemished before the instant offense.[1] He worked at respectable investment firms and enjoyed a good business reputation. David loved his job but knows he faces an industry ban from the SEC, and will not work within financial services again. His road ahead will undoubtedly be challenging, but David is committed to making amends for his professional misconduct and for the offenses. He has already begun to reflect upon the past, as well as look to the future, to rebuild his life, pursue another career, and to try to earn back the trust of those he let down.

Recognizing that while insider trading creates an unfair playing field and the public's faith in the trading industry should be restored through general deterrence, the Probation Department applied the sentencing standard to *this* defendant, characterizing David as a "non-violent, first-time offender, who has an excellent work history, is a caring husband, and is a dutiful son to his ailing parents." PSR, Page 27, ¶2. Taking the totality of the circumstances and considering David holistically, the Probation Department recommended that this Court impose a sentence of six months' imprisonment to run concurrently on counts 1 and 4 followed by a one-year term of supervised release[2] and a $200 mandatory special assessment. Id. The Probation Department urged the Court to impose this sentence, as it addresses the factors set forth in 18 USC §3553 while also meeting all the sentencing objectives.

We respectfully urge the Court to adopt the sentencing recommendation set forth in the PSR, *to wit*, a term of imprisonment of six months followed by one-year of post release supervision. This sentence addresses the nature of the offense, the goals of sentencing, which include deterrence and rehabilitation, David's solid background and strong personal characteristics, and the other consequences he faces as he rebuilds his life.

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[1] David Hobson's financial advisor record can be viewed at https://brokercheck.finra.org/individual/summary/2448412 and reflects no prior incidences of misconduct or customer complaints in his entire 22 years as a broker prior to the matter currently before the Court.

[2] The PSR sets forth special healthcare conditions for supervised release. David does not object to the special conditions recommended by the PSR. However, he respectfully requests continuation of services as recommended by his current healthcare provider, with whom he has developed a good rapport, and whom possesses the requisite credentials to meet the goals of this special condition. See PSR ¶¶82-83 and 85-86.

THE OFFENSE CONDUCT AND PLEA AGREEMENT

As set forth in more detail in the PSR, a four-count superceding indictment was filed in the Southern District of New York charging David Hobson with Insider Trading. The indictment charges conspiracy and alleges that David executed profitable trades for himself and his clients in the securities of Medivation, Ardea and Furiex based on inside information provided by his client, Michael Maciocio, a pharmaceutical employee. The indictment also included a forfeiture allegation requiring David Hobson to forfeit to the United States all property constituting or derived from the offenses.

On October 25, 2016, the defendant appeared before Your Honor and pleaded guilty to Counts 1 and 4 only and admitted the forfeiture allegation. The parties stipulated to the following in accordance with the plea agreement –

1. The Guidelines provisions in effect as of November 1, 2015, apply to this case. The applicable Guidelines level is **17** (which includes a three-level reduction pursuant to USSG §3E1.1(a) and (b).
2. David has no prior criminal convictions and the Criminal History Category is I.
3. The Guidelines range is 24 to 30 months' imprisonment.
4. After determining the defendant's ability to pay, the Court may impose a fine pursuant to USSG §5E1.2 and the applicable fine range is $10,000 to $5,000,000.
5. The defendant admits to forfeiture in the amount of a money judgment of $385,664.39 and all assets held in Vanguard accounts 217-89577 and 295-60022, in partial satisfaction of the money judgment.

PSR FINDINGS

Following his plea allocation hearing, David met with the United States Probation Department and provided information as requested. The PSR highlights the following –

1. He is a first-time offender with no prior criminal convictions. PSR ¶66.
2. There are no victims in this offense and restitution is not applicable. PSR ¶49
3. David has not impeded or obstructed justice. PSR ¶50
4. He has been in full compliance with all the pretrial supervision conditions imposed. PSR, P.30.
5. He is a good candidate for voluntary surrender, and is not viewed as a flight risk or danger to the community. PSR, P.30.
6. David does not have an ability to pay a criminal fine and it should be waived in this case. PSR ¶101 and PSR PP.26 and 29.
7. A variance to the sentencing options provided by statute is recommended. It should consist of six-months imprisonment, a $200 mandatory special assessment, and a 1-year supervised release with special conditions.
8. Imposition of Forfeiture in the amount of $385,664.39. PSR ¶P26.

PERSONAL BACKGROUND AND CHARACTERISTICS

David Hobson is 48-years old and grew up in a middle-class neighborhood in Rhode Island with two parents and his younger brother. He was a good athlete and student and graduated from high school with honors. Before leaving for college at only 17 years old, David's parents divorced. David attended college and worked as part of his university's cooperative program. After graduating with a bachelor's degree in business (with a concentration in finance) in 1991, he accepted an offer of employment in his then-position of Assistant to the Director at a major property and casualty insurance company. Thereafter, in 1994, at only 26 years old, he left the company to begin work in the financial services industry as a financial advisor, where he remained for 22 years. David has had a solid employment history since the age of 18. His regulatory record reflects an unblemished broker record. He always did right by his clients and enjoyed a good business reputation.

David Hobson and Mr. Maciocio grew up in different neighborhoods in the same town and were involved in youth sports together. Many years later, after crossing paths again, Mr. Maciocio became a client. It was in the context of this broker-client relationship that the defendant made professional errors for which he has already paid a significant price and for which he continues to face temporary and permanent consequences. David's successful career is now over. As part of the still-pending proceedings against him in the parallel SEC suit, he faces a permanent bar in the financial services industry. David has struggled to come to terms with his professional loss of reputation and earnings capability, but he already begun to put back some of the pieces of his life including beginning to work as a laborer in commercial construction. The loss of a 22-year stable career carries with it its own staggering personal and professional consequences, but it is not the only loss David will have with his felony conviction. A felony conviction carries with it a permanent stigma and many barriers to other work.[3] The collateral consequences of a felony conviction are often factored in to sentencing in recognition of the many impediments beyond the scope of these legal proceedings.

With this memorandum, David also presents for the Court's consideration, many strong and heartfelt letters of support from those who know him best – family, close friends, and long-time neighbors. As pointed out by his wife with whom he has been together for twenty years, the letters "chronicle a human being whose life has been filled with delivering love and assistance to all those around him. David has navigated every relationship in his life with ease because of his rather good-natured personality and generosity to others." *See, letter from defendant's wife.* The letters resoundingly speak to David Hobson as a valued and important family member – from a loving husband to his wife of 18 years, to a dutiful and supportive son to his elderly and seriously infirmed parents, to an admired brother, to a loving nephew and great-nephew, and to an in-law family who adores him. He shows a kindness to elderly, infirmed, and rescued animals. He is a reliable, nonjudgmental, and tolerant friend who can be readily called upon in times of need who has a diversity of deep friendships that are both decades old, as well as more recent. He is a solicitous and admired neighbor who has easily garnered the term "friend" to those who once knew him only as "stranger." David Hobson possesses many admirable qualities and he touches the lives of many in a positive and impactful way.

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[3] Many opportunities are foreclosed by a felony conviction. For example, RI will not permit licensure in many professions and does not differentiate the type felony committed or risk to public safety.

ARGUMENT

A sentencing court must impose a sentence "sufficient, but not greater than necessary", to comply with the purposes of in 18 USC §3553(a) which are (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; and (4) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner. In arriving at a sentence, the court must also consider the kinds of sentences available, the Guidelines range and any Unities States Sentencing Commission Policy Statements, the need to avoid unwarranted sentence disparities among similarly situated defendants and the need to provide restitution to any victims of the offense.

The sentencing judge has no obligation to follow the sentencing guidelines, as they are now considered merely advisory. United States v. Booker, 125 S.Ct 738 (2005). In fact, although a court must consider the federal sentencing Guidelines, it may not presume the Guidelines range is reasonable. Gall v. United States, 128 S.Ct.586, 597 (2007). A court may depart from the Guidelines on basic disagreement with policy guidelines in any given case. Kimbrough v. United States, 128 S. Ct. 558, 570 (2007). In reaching a sentence, the court must make an individualized assessment of the facts presented. Gall at 597.

After careful consideration of the offense conduct along with the totality of the sentencing factors, the probation department recommended a sentencing variance in the form of six months' imprisonment, to run concurrently on Cts. 1 & 4, followed by a one-year term of supervised release would achieve the goals of sentencing of 18 U.S.C. § 3553. We respectfully request the court adopt the probation office's recommendation. A short period of incarceration, followed by a one-year term of supervised release would meet all the goals of sentencing. The need to punish David and deter him from further crimes has already been met by the loss of career and licensure, and by the forfeiture entered against him. Indeed, these are high prices to pay for the offense conduct, and should serve as a very strong general deterrent to those similarly situated financial advisors within the securities industry who may be provided with tips from corporate insiders. David's experience should alert the industry professionals that trading on inside tips can result in financial and professionally detrimental consequences, as well as expose them to loss of liberty in the form of pretrial supervision, probation or incarceration, and supervised release (with or without court imposed mandatory and special conditions).

David's positive contributions to society in general should reduce the amount of time that he is taken out of society where he is needed most – to provide care and assistance to those who critically depend on him. David is well-educated and has a 30-year solid employment history and is not in need of educational or vocational rehabilitation. He is a self-starter without a need for lengthy re-entry services where such services could take away needed services from another with greater need. A short incapacity in the form of six months' incarceration as suggested by the probation department is just punishment for his offense, especially when considered in tandem with the forfeiture order as well as collateral losses including an industry bar that he faces.

David is the first of two co-conspirators to be sentenced in this case. David, who was a "tipee" who executed trades based on tips from the co-defendant, deeply regrets doing so. He wishes he had exercised better judgment. Respectfully, David's punishment should be considered along with his co-defendant, so that the sentencing of each addresses the goal of avoiding unwarranted sentencing disparities.

CONCLUSION

David respectfully submits to this Court that an appropriate sentence, after making an individualized assessment and considering the totality of the circumstances in this case, the applicable guidelines and the factors set forth in Title 18, United States Code, Section 3553(a), including the nature and circumstances of the offense, should consist of a term of imprisonment of six months, as recommended by the United States Probation Department, followed by a period of one-year supervised release. Such a sentence is sufficient, but not greater than necessary to satisfy all the purposes of sentencing.

Respectfully submitted,
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BY HIS ATTORNEY,

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